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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 IN RE: VOLKSWAGEN “CLEAN DIESEL”  
9 MARKETING, SALES PRACTICES, AND  
10 PRODUCTS LIABILITY LITIGATION

MDL No. 2672 CRB (JSC)

11 This Document Relates to:

12 Environmental Protection Commission of  
13 Hillsborough County, Florida v. Volkswagen  
14 AG et al., No. 16-cv-2210

15 Salt Lake County v. Volkswagen Group of  
16 America, Inc. et al., No. 16-cv-5649

**ORDER RE: SOFTWARE  
DIVISIBILITY AND SCHEDULE FOR  
FURTHER DISCOVERY AND  
BRIEFING**

17 In the above-captioned MDL, the Environmental Protection Commission of  
18 Hillsborough County, Florida and Salt Lake County, Utah (collectively, Counties) contend  
19 that Defendants’ post-sale software update violated the anti-tampering regulations of  
20 Hillsborough County and Utah, respectively. See Rules of Env’tl. Prot. Comm’n of  
21 Hillsborough Cty. (EPC), Rule 1-8.05(1), (6); Utah Admin. Code § R307-201-4. The  
22 Ninth Circuit held that these claims are not preempted by the Clean Air Act. In re  
23 Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig., 959 F.3d 1201,  
24 1225-26 (9th Cir. 2020).

25 In February 2022, the Court denied the Counties’ joint motion for a suggestion to  
26 remand to their transferor courts. See Order on Mot. to Remand (dkt. 7944). Instead, to  
27 streamline discovery, the Court ordered discovery and briefing on the issue of “software  
28 divisibility”—that is, whether constituent features of a software update can qualify as  
separate instances of tampering under the Counties’ regulations. See id. at 2-3. After full

briefing and a hearing, the Court now HOLDS that any modification or alleged tampering that was accomplished at one time is indivisible and can qualify as only one instance of tampering under the relevant regulations.

The next issue to be resolved is whether the post-sale software modification in this case violated the Counties' regulations by increasing vehicle emissions relative to emissions before the modification. The Court ORDERS that discovery on the net emissions effect of the post-sale software begin today. Defendants are instructed to cooperate immediately and fully with all the Counties' requests germane to this issue.

Defendants represent that the software modification reduced emissions overall and that they have already fully developed the facts and litigated this issue in other proceedings. Accordingly, the next step is for Defendants to file a motion for partial summary judgment. The Court ORDERS the following deadlines:

DATE	EVENT
July 15, 2022	Discovery begins on the net emissions effect of the post-sale modification
July 22, 2022	Defendants file a Motion for Partial Summary Judgment on this issue
August 15, 2022	Discovery ends
August 25, 2022	Counties file their Oppositions
September 1, 2022	Defendants file their Reply Brief
September 16, 2022	Partial Summary Judgment Hearing (in person)

**IT IS SO ORDERED.**

Dated: July 15, 2022



CHARLES R. BREYER  
United States District Judge